

**PROPOSED ORDER OF  
DEPARTMENT OF HEALTH SERVICES  
TO ADOPT PERMANENT RULES**

The Wisconsin Department of Health Services (the Department) proposes an order to repeal and recreate chapter DHS 1, relating to Uniform Fee System.

**RULE SUMMARY**

**Statutes interpreted**

Section 46.03 (18) (a), (b), (c), (d), and (e) Stats., read:

**(18) UNIFORM FEE SCHEDULE, LIABILITY AND COLLECTIONS.**

(a) Except as provided in s. 46.10 (14) (b) and (c), the department shall establish a uniform system of fees for services provided or purchased by the department, or a county department under s. 46.215, 46.22, 51.42, or 51.437, except for services provided under ch. 48 and subch. III of ch. 49; community-based juvenile delinquency-related services; juvenile correctional services; services provided to courts; and outreach, information, and referral services; or when, as determined by the department, a fee is administratively unfeasible or would significantly prevent accomplishing the purpose of the service. A county department under s. 46.215, 46.22, 51.42, or 51.437 shall apply the fees that it collects under this program to cover the cost of those services.

(b) Except as provided in s. 46.10 (14) (b) and (c), any person receiving services provided or purchased under par. (a) or the spouse of the person and, in the case of a minor, the parents of the person, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, shall be liable for the services in the amount of the fee established under par. (a). If a minor receives services without consent of a parent or guardian under s. 51.138 or 51.47, the department or, if applicable, the county department shall base the fee solely on the minor's ability to pay.

(c) The department shall make collections from the person who in the opinion of the department is best able to pay, giving due regard to the present needs of the person or of his or her lawful dependents. The department may bring action in the name of the department to enforce the liability established under par. (b). The department may not collect from the parent of a minor receiving treatment for alcohol or drug abuse, except as provided in s. 51.47. This paragraph does not apply to the recovery of fees for the care and services specified under s. 46.10.

(d) The department may compromise or waive all or part of the liability for services received. The sworn statement of the collection and deportation counsel appointed under s. 46.10 (7) or the department secretary, shall be evidence of the services provided and the fees charged for such services.

(e) The department may delegate to county departments under s. 46.215, 46.22, 51.42 or 51.437 and other providers of care and services the powers and duties vested in the department by pars. (c) and (d) as it deems necessary to efficiently administer this subsection, subject to such conditions as the department deems appropriate.

Section 46.10 (3), (4) (a), (5), (7), (8) (c) to (e), (10), (11), (14)(a) and (16), Stats., reads:

**(3)** After investigation of the liable persons' ability to pay, the department shall make collection from the person who in the opinion of the department under all of the circumstances is best able to pay, giving due

regard to relationship and the present needs of the person or of the lawful dependents. However, the liability of relatives for maintenance shall be in the following order: first, the spouse of the patient; then, in the case of a minor, the parent or parents.

**(4)(a)** If a person liable under sub. (2) fails to make payment or enter into or comply with an agreement for payment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order.

**(5)** If any person named in an order to compel payment issued under sub. (4) (a) fails to pay the department any amount due under the terms of the order and no contested case to review the order is pending and the time for filing for a contested case review has expired, the department may present a certified copy of the order to the circuit court for any county. The circuit court shall, without notice, render judgment in accordance with the order. A judgment rendered under this subsection shall have the same effect and shall be entered in the judgment and lien docket and may be enforced in the same manner as if the judgment had been rendered in an action tried and determined by the circuit court.

**(7)** The department shall administer and enforce this section. It shall appoint an attorney to be designated "collection and deportation counsel" and other necessary assistants. The department may delegate to the collection and deportation counsel such other powers and duties as it considers advisable. The collection and deportation counsel or any of the assistants may administer oaths, take affidavits and testimony, examine public records, subpoena witnesses and the production of books, papers, records, and documents material to any matter of proceeding relating to payments for the cost of maintenance. The department shall encourage agreements or settlements with the liable person, having due regard to ability to pay and the present needs of lawful dependents.

**(8) (c)** From time to time investigate the financial condition and needs of persons liable under sub. (2), their ability to presently maintain themselves, the persons legally dependent upon them for support, the protection of the property and investments from which they derive their living and their care and protection, for the purpose of ascertaining the person's ability to make payment in whole or in part.

**(d)** After due regard to the case and to a spouse and minor children who are lawfully dependent on the property for support, compromise or waive any portion of any claim of the state or county for which a person specified under sub. (2) is liable, but not any claim payable by an insurer under s. 632.89 (2) or (4m) or by any other 3rd party.

**(e)** Make an agreement with a person who is liable under sub. (2), or who may be willing to assume the cost of maintenance of any patient, providing for the payment of such costs at a specified rate or amount.

**(10)** The department shall make all reasonable and proper efforts to collect all claims for maintenance, to keep payments current, and to periodically review all unpaid claims.

**(11) (a)** Except as provided in par. (b), in any action to recover from a person liable under this section, the statute of limitations may be pleaded in defense.

**(b)** If a person who is liable under this section is deceased, a claim may be filed against the decedent's estate and the statute of limitations specified in s. 859.02 shall be exclusively applicable. This paragraph applies to liability incurred on or after July 20, 1985.

**(14) (a)** Except as provided in pars. (b) and (c), liability of a person specified in sub. (2) or s. 46.03 (18) for inpatient care and maintenance of persons under 18 years of age at community mental health centers, a county mental health complex under s. 51.08, the centers for the developmentally disabled, the Mendota

Mental Health Institute, and the Winnebago Mental Health Institute or care and maintenance of persons under 18 years of age in residential, nonmedical facilities such as group homes, foster homes, subsidized guardianship homes, residential care centers for children and youth, and juvenile correctional institutions is determined in accordance with the cost-based fee established under s. 46.03 (18). The department shall bill the liable person up to any amount of liability not paid by an insurer under s. 632.89 (2) or (4m) or by other 3rd-party benefits, subject to rules that include formulas governing ability to pay promulgated by the department under s. 46.03 (18). Any liability of the patient not payable by any other person terminates when the patient reaches age 18, unless the liable person has prevented payment by any act or omission.

**(16)** The department shall delegate to county departments under ss. 51.42 and 51.437 or the local providers of care and services meeting the standards established by the department under s. 46.036, the responsibilities vested in the department under this section for collection of patient fees for services other than those provided at state facilities, those provided to children that are reimbursed under a waiver under s. 46.27 (11), 46.275, 46.278, or 46.2785, or those provided under the disabled children's long-term support program if the county departments or providers meet the conditions that the department determines are appropriate. The department may delegate to county departments under ss. 51.42 and 51.437 the responsibilities vested in the department under this section for collection of patient fees for services provided at the state facilities if the necessary conditions are met.

### **Statutory authority**

Section 227.11 (2) (a) and (b), Stats., read:

**(2)** Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

Section 227.10 (1) and (2m) read:

**(1)** Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. A statement

of policy or an interpretation of a statute made in the decision of a contested case, in a private letter ruling under s. 73.035 or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render it a rule or constitute specific adoption of a rule and is not required to be promulgated as a rule.

**(2m)** No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter, except as provided in s. 186.118 (2) (c) and (3) (b) 3. The governor, by executive order, may prescribe guidelines to ensure that rules are promulgated in compliance with this subchapter.

### **Explanation of agency authority**

The Legislature directed the Department to establish a uniform system of fees for certain services provided or purchased by the department or certain county departments. The Department is also directed to make collections, determine ability to pay, enforce or compromise liability and to delegate some of these responsibilities to counties. The proposed rules are necessary to effectuate the purposes of the statutes listed in the “interpreted statutes” section. In addition, the proposed rules are necessary to comply with s. 227.10 (1) and (2m), Stats.

### **Related statute or rule**

None.

### **Plain language analysis**

Chapter DHS 1 is outdated. The rule has not been substantively revised since 1978. The department proposes to repeal and recreate the chapter in order to restate its provisions more clearly and to minimize confusion and inconsistency of interpretation.

### **Summary of, and comparison with, existing or proposed federal regulations**

The department was unable to locate federal regulations that were sufficiently analogous to the proposed rules. However, 42 CFR 51c.303 and 42 CFR 56.303, for example, discuss similar fee, billing, ability to pay and collection requirements to be used by certain federal health centers. Specific program requirements are further contained in compliance manuals (see, for example, Chapter 16, <https://bphc.hrsa.gov/programrequirements/compliancemanual/chapter-16.html>).

### **Comparison with rules in adjacent states**

Provisions relating to similar subjects of the proposed rule are contained in various sections of code from adjacent states. See, for example, Illinois Admin. Code. tit. 59 §106 (Services Charges), tit. 89 § 103 (Support Responsibility of Relatives), tit. § 545 (Ratemaking), tit. § 560 (Customer Financial Participation), IAC Rules 441.11 (Collection of Public Assistance Debts), IAC Rules 441.36 (Facility Assessments), IAC Rules 445.95 (Collections), Michigan Admin. Code r. 330.8005-330.8284 (Financial Liability for Mental Health Services), Minnesota Rules ch. 9550 Part 9550.6240 (Collections), ch. 9515 Part 9515.2200 (Sources of Income Considered), ch. 9515 Part 9515.2600 (Responsible Relative’s Ability to Pay).

### **Summary of factual data and analytical methodologies**

The Department established an advisory committee comprised of representatives from Jackson, Portage, Marathon, Walworth, Green and Outagamie counties, as well as a representative from the Department of Children and Families. The advisory committee held nine open meetings in 2016 and 2017. The Department also reviewed policies and procedure materials from the Western Region of Integrated Care Consortia (Jackson, Monroe and La

Crosse counties), Portage, Walworth, Green, Lafayette, Outagamie, and Marathon County collection procedures. In addition, the department solicited comments about the proposed rulemaking through its website and throughout the entire rule promulgation process.

**Analysis and supporting documents used to determine effect on small business**

TBD (once we go through EIA process)

**Effect on small business**

TBD (once we go through EIA process)

**Agency contact person**

Mary P. Jablonski  
Section Chief  
Bureau of Fiscal Services – Revenue & Cash Management  
(608) 261-5984  
mary.jablonski@wisconsin.gov

**Statement on quality of agency data**

The Department did not rely upon any data in preparing the proposed rule.

**Place where comments are to be submitted and deadline for submission**

Comments may be submitted to the agency contact person that is listed above or by accessing <https://www.dhs.wisconsin.gov/rules/permanent.htm> until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department's website, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

## **RULE TEXT**

SECTION 1. Chapter DHS 1 is repealed and recreated to read:

### **Chapter DHS 1 Uniform Fees, Liability and Collections**

<b>DHS 1.01</b>	<b>Authority and purpose</b>
<b>DHS 1.02</b>	<b>Definitions</b>
<b>DHS 1.03</b>	<b>Fees</b>
<b>DHS 1.04</b>	<b>Liability</b>
<b>DHS 1.05</b>	<b>Billing</b>
<b>DHS 1.06</b>	<b>Collections</b>
<b>DHS 1.07</b>	<b>Delegation</b>

#### **DHS 1.01 Authority and purpose.**

This chapter is authorized by s. 227.11 (2) and interprets ss. 46.03 (18) and 46.10, Stats., to establish a system for determining fees, liability, billing, and collection practices for services.

#### **DHS 1.02 Definitions.**

- (1) “Administratively unfeasible” means the cost of collection would likely exceed the fee established for a service.
- (2) “Client” means a person that has received services.
- (3) “County department” means any of the following:
  - (a) A county department of social services under ss. 46.215, 46.22, or 46.23, Stats.
  - (b) A county department of community programs under s. 51.42, Stats.
  - (c) A county department of developmental disabilities services under s. 51.437, Stats.
- (4) “Collection period” means the period of time calculated for each unit of service, which begins on the day a service is provided and ends as provided in ss. 893.87, 893.40, Stats., or as provided under any other applicable statute of limitations.
- (5) “Services” means services provided to a person by the department or a county department, or care, maintenance, services and supplies described in s. 46.10 (2), Stats., except:
  - (a) Services provided by the department or a county department under ch. 48, subch. III of ch. 49, Stats.
  - (b) Community-based juvenile delinquency-related services.
  - (c) Juvenile correctional services.
  - (d) Services provided to courts.
  - (e) Outreach, information, and referral services.
  - (f) Services for which the department determines assessment of a fee would be administratively unfeasible, or would prevent accomplishing the purpose of the service.
  - (g) Any other services for which the department or a county department may not legally assess a fee, establish liability, or collect payment.
- (6) “Department” means the department of health services.
- (7) “Fee” means the amount established for a service under s. DHS 1.03.
- (8) “Minor” means a person under 18 years of age.
- (9) “Parent” means any of the following:
  - (a) A person who currently has legal custody under Wisconsin law of a minor client who receives services, or who had legal custody under Wisconsin law of a minor at the time services were provided, except when a court determined or ordered that the person is not liable or otherwise responsible for their payment.

- (b) A person that a court determines or orders to be liable or otherwise responsible for payment of services provided to a minor.
- (c) A resident of the state appointed guardian of a child by a foreign court who brought a child into this state for the purpose of adoption, as described in s. 48.839 (1), Stats.
- (10) “Spouse” means any of the following:
  - (a) A person who is currently married, as recognized by Wisconsin law, to a person who received services.
  - (b) A person who was married, as recognized by Wisconsin law, to a person who received services at the time services were provided.

**DHS 1.03 Fees.** The department shall establish fees for services.

**Note:** [\[Link to established fees\]](#).

**DHS 1.04 Liability.**

- (1) **GENERAL.** Unless otherwise provided by law, the following are liable for services provided to a client:
  - (a) A client who is not a minor.
  - (b) A spouse.
  - (c) A parent.
  - (d) Any other person, entity, or estate with liability as provided under s. 46.10, Stats.
- (2) **AMOUNT OF LIABILITY.** Liability of any person, entity, or estate under sub. (1) for services shall be based upon the fee established under s. DHS 1.03, subject to subs. (4) and (5).
- (3) **ENFORCEMENT.** The department may bring action to declare the liability of any person or entity under sub. (1), or to enforce payment toward such liability.
- (4) **WAIVER.** All or part of the liability established under this chapter may be waived, if a person, entity, or estate under sub. (1) meets one of the following conditions:
  - (a) The person receives Medicaid.
  - (b) The person receives Supplemental Security Income.
  - (c) No payments are required under s. DHS 1.05 (4).
- (5) **NON-COMPLIANCE.** A person, entity, or estate under sub. (1) may be deemed liable and billed for the entire fee amount established under s. DHS 1.03 if the department determines that the person, entity, or estate does any of the following:
  - (a) Refuses to complete a financial responsibility form or to provide documentation required to verify information provided in a financial responsibility form.
  - (b) Intentionally misrepresents any information provided in a financial responsibility form.

**DHS 1.05 Billing.**

- (1) **GENERAL.** Each month during the collection period, the department shall, as applicable, issue a billing statement for any outstanding liability to the following:
  - (a) A client who is not a minor.
  - (b) Any and all parents.
  - (c) Any and all authorized representatives under sub. (3).
- (2) **THIRD-PARTY PAYERS.** The department or a county department shall file a claim with any third-party payers in a manner consistent with s. Ins 3.40. Medicaid shall be the payer of last resort.
- (3) **AUTHORIZED REPRESENTATIVE.** Upon receipt of proof of any such relationship, billing statements shall be issued to any legal representative of a client, such as a guardian of the estate, a representative payee, or any other person or entity authorized by law or through the client’s informed consent, to receive such information.
- (4) **AMOUNT.** The amount billed, if any, shall be based upon liability established under this chapter, the Maximum Monthly Payment Schedule, and ability to pay.
  - (a) *Ability to pay.* Except as provided in par. (b) or s. DHS 1.04 (5), at all of the following times during the collection period, ability to pay shall be determined by use of a financial responsibility form that gives due regard to relationship and the present needs of the person or of the lawful dependents:

1. Upon receipt of a financial responsibility form to the department or county department by a person, entity, or estate under s. DHS 1.04 (1).
2. When there has been a change in the financial circumstances of a person, entity, estate under s. DHS 1.04 (1).
3. At a minimum, every 12 months, while services are being rendered.
4. At the conclusion of services rendered.

Note: The Maximum Monthly Payment Schedule is available by accessing:

<https://www.dhs.wisconsin.gov/uniform-fee/index.htm>

Note: The financial responsibility form is available by accessing:

<https://www.dhs.wisconsin.gov/forms/f8/f80130.pdf>

- (b) *Shortcut Method.* A person may be deemed unable to pay under par. (a) if any of the following apply:
  1. The person received Medicaid.
  2. The person received Supplemental Security Income.
- (c) *Adjustments.* The department may adjust a past determination of ability to pay, looking back 90 days from the date of receipt of a financial responsibility form under sub. par. (4) (a).
- (d) *Payment Plans.* The department may establish a payment plan for any amount billed under this subsection.
- (5) **BILLING STATEMENTS.** At a minimum, billing statements shall include all of the following information:
  - (a) An itemization of any services provided during the billing period, including the date the service was provided, the number of units, and the fee amount.
  - (b) Any claim filed with a third-party payer and any expected payment on the claim.
  - (c) The date and amount of any other payments received during the billing period.
  - (d) The total outstanding liability as of the date of the statement.
  - (e) The due date and amount of monthly payment required under sub. (4).
- (6) **OTHER REQUIREMENTS.** The department or county department shall:
  - (a) Maintain documentation of compliance with this section and provide such documentation to the department upon request.
  - (b) Establish a documented procedure to periodically review accounts for accuracy and compliance with this chapter.
  - (c) Establish a written grievance procedure for actions relating to liability determination, billing, and collections.
  - (d) Shall not issue a billing statement or collect from the parent of a minor client who is receiving treatment for alcohol or drug abuse, except as provided in s. 51.47, Stats.

#### **DHS 1.06 Collections.**

- (1) **GENERAL.** Subject to s. 46.10 (16), Stats., the department shall collect payment from any liable person, entity, or estate in the amount established under s. DHS 1.05 (4).
- (2) **DELINQUENT ACCOUNT.** The department may deem a client's account to be delinquent, when all of the following have occurred:
  - (a) No payment toward the amount established under s. DHS 1.05 (4) has been received for 90 consecutive days.
  - (b) The department has notified all applicable persons or entities under s. DHS 1.05 (1) at least three times of the missed payments and documented each notification attempt.
- (3) **NON-PURSUIT.** The department shall not attempt to enforce payment of any liability established under this chapter at any time that a liable person, entity, or estate does not have ability to pay under s. DHS 1.05 (4).
- (4) **ENFORCEMENT.** The department may enter into agreement or settlements with liable persons, entities, or estates, or issue orders to compel payment as provided under s. 46.10, Stats. The department shall send an order to compel by certified mail to the last known address of a liable person, entity, or estate.



- (5) USE OF COLLECTION AGENCIES. The department may establish a written agreement with a collection agency to perform any duties and responsibilities under this section. Any such collection agency must be licensed or certified by the Wisconsin department of financial institutions.
- (6) COLLECTION REFERRAL. A county department may refer a delinquent account under sub. (1) to the department for collections.

Note: A referral may be made by contacting the Division of Enterprises services at: [\[Contact\]](#)

- (7) APPEALS. A person aggrieved by an order to compel payment, issued by the department under sub. (4), may appeal the order as a contested case under ch. 227, Stats., as follows:
  - (a) A request for appeal must be mailed to the department of administration's division of hearings and appeals, within 30 days after the date of the order.
  - (b) A request shall be deemed filed on the day that it is received by the department of administration's division of hearings and appeals.

Note: PO BOX 7875  
4822 Madison Yards Way #5  
Madison, WI 53707-7875

#### **DHS 1.07 Delegation**

- (1) GENERAL.
  - (a) The department may delegate duties and responsibilities under ss. DHS 1.04 to DHS 1.06 to a county department, subject to conditions established by the department.
  - (b) The department shall delegate duties and responsibilities under s. 46.10, Stats., to a county department under ss. 51.42 and 51.437, Stats.
- (2) PROCESS. A request for delegation under sub. (1) shall be submitted to the department. The department shall notify a county requesting any such delegation of its approval or denial, and specify any conditions of such delegation.

**SECTION 2. EFFECTIVE DATE:** This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.